

**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL AND  
REDEVELOPMENT AGENCY MEETING  
SPECIAL MEETING OF THE MORGAN HILL ECONOMIC  
DEVELOPMENT CORPORATION**

**MINUTES- APRIL 6, 2011**

**CALL TO ORDER**

Mayor Tate called the City Council meeting to order at 7:02 p.m.

**ROLL CALL ATTENDANCE**

Present:	Council Members:	Tate, Constantine, Librers, Siebert
Absent:	Council Members:	Carr

**DECLARATION OF POSTING OF AGENDA**

Deputy City Clerk Drimakis certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

Led by Mayor Tate.

*Councilmember Carr arrived and took his seat at the dais at 7:04 p.m.*

**PROCLAMATIONS / RECOGNITIONS / INTRODUCTIONS**

Mayor Tate presented a proclamation to designate the month of April as Sexual Assault Awareness Month to *Kim with Community Solutions*.

Mayor Tate presented a proclamation to designate April 10<sup>th</sup> through 16<sup>th</sup> as National Telecommunicators Week to *Morgan Hill Police Chief David Swing*.

**PRESENTATIONS**

None.

**CITY COUNCIL REPORTS**

Council Member Carr reported on a Save Caltrain community meeting scheduled for April 14, 2011, at 6:00 p.m. at the Community and Cultural Center.

**CITY MANAGER'S REPORT**

City Manager Tewes reported on a supplemental item regarding the CRC solar panels design build, item 13, which presents a staff recommendation on a firm and contract. He advised Council that the preparation of next year's budget is underway and commented on the uncertainties facing the budget such

as whether the City will be able to come to an agreement with the employees bargaining units to reduce the cost of salaries and other costs going forward, and the uncertainties regarding the State budget. He further stated that in spite of the uncertainties staff hopes to present the budget to Council by the middle of May. He announced that the Joint Powers Board governing Caltrain has made short term decisions that are to the benefit of South County and reductions will be made but services will continue to the South County.

### **CITY ATTORNEY'S REPORT**

City Attorney Wan had no reports.

### **OTHER REPORTS**

Mayor Tate stated that he would like the budget workshop scheduled for the end of May to be rescheduled to Friday, June 3, 2011. He announced the Coffee with the Mayor event that is scheduled for Saturday April 10, 2011, at 10:00 a.m. at Hot Java.

### **PUBLIC COMMENT**

Mayor Tate opened the public comment period at 7:15 p.m.

Joseph Carrillo spoke regarding advertising the Aquatics Center using his four-wheel bicycle and requested assistance from the Council. He stated that the financial impact to the City would be minimal.

Kim Ferm and Jessica Garcia-Kohl spoke to Council regarding 211 Santa Clara County. They provided Council and the public with information regarding 211 services and the importance of those services and the resources they provide.

Kathy Sullivan, Friends of the Library, invited each Councilmember and the public to become friends of the Library by making a small donation.

Julie Hutchenson spoke about a Committee for Green Foothills and Greenbelt Alliances South County series agricultural panel that is scheduled for Friday, April 15, 2011. She also announced an urban tour of Morgan Hill scheduled for the next day, as well as the South County Earth Day event organized in conjunction with the Chamber of Commerce and Farm Bureau.

Julio Garcia, an employee of Giancarlos restaurant, spoke regarding an issue impacting the possible sale of the restaurant. He stated that the City is requiring that the existing enclosed patio be torn down, but he would like Council to consider allowing the restaurant to keep it up for one year or until the completion of the sale.

Mayor Tate closed the public comment period at 7:29 p.m.

## ***City Council and Redevelopment Agency Action***

### **ADOPTION OF AGENDA**

Mayor/Chair Tate announced that there were no changes to the Agenda.

**Action:** On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Constantine **Adopted** the Agenda as posted. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:** On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Librers **Approved** the City Council, Redevelopment Agency and Joint City Council and Redevelopment Agency Consent Calendar Items 3-5 and 6. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0. Item 1 was removed from the consent calendar by Joseph Carrillo. Item 2 was removed from the consent calendar by Councilmember Siebert.

1. **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING A GRANT AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MORGAN HILL TO PURSUE A TOBACCO/SMOKE-FREE PARKS AND PUBLIC SPACES POLICY OR ORDINANCE**

**Action(s):**

1. **Adopt** resolution authorizing a grant agreement between the county of Santa Clara and the City of Morgan Hill to pursue a tobacco/smoke-free parks and public spaces policy or ordinance; and
2. **Authorize** the City Manager to execute the contract on behalf of the City.

*Item 1 was removed from consent calendar.*

Mayor Tate opened the public comment period at 7:32

Public comment was received by Joseph Carrillo who commented on his support of this item, stating that it will assist in keeping parks clean.

Mayor Tate closed the public comment period at 7:33

**Action:** On a motion by Council/Agency Member Constantine and seconded by Council/Agency Member Carr **Adopted** resolution 6412 authorizing a grant agreement between the county of Santa Clara and the City of Morgan Hill to pursue a tobacco/smoke-free parks and public spaces policy or ordinance; and **Authorized** the City Manager to execute the contract on behalf of the City. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.

2. **BURRITO AZTECA AQUATICS CENTER CONCESSIONAIRE LICENSE AGREEMENT**

**Action(s):**

1. **Approved** the Concessionaire License Agreement with Burrito Azteca.
2. **Authorized** the City Manager to execute the contract on behalf of the City

*Item 2 was removed from consent calendar.*

Staff report was presented by Recreation and Community Services Director Steve Rymer.

City Manager Tewes announced that Councilmember Siebert requested consideration of an amendment to section 9 F of the agreement; he further stated that the concessionaire found the change acceptable.

Recreation and Community Services Director Rymer explained that the section would be amended so the dollar amount of repairs would not be limited for the contractor if those repairs were a result of negligence on the contractor's part. He also confirmed that the vendor is agreeable to the change.

Councilmember Siebert commented on the contractor installing vending machines and asked whether they were considering energy efficient machines.

In response to Councilmember Siebert, Recreation and Community Services Director Rymer stated that initially vending services will not be provided and when those services are considered the benefit of energy efficient machines will be explored. He also noted that efforts are underway to revise Exhibit A of the agreement to clarify and more accurately specify the concession stand, the grill, a storage shed, as well as the area for a future vending machine.

Mayor Tate opened the public comment period at 7:37 p.m.

Joseph Carillo spoke in favor of the agreement.

Mayor Tate closed the public comment period at 7:37 p.m.

***Action:** On a motion by Council/Agency Member Siebert and seconded by Council/Agency Member Constantine Approved the Concessionaire License Agreement with Burrito Azteca with the changes as stated to section 9 F as discussed, and Authorized the City Manager to execute the contract on behalf of the City. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

3. **COUNTYWIDE AB939 IMPLEMENTATION FEE AGREEMENT FOR FY 2011/2012**

**Action(s):** Authorized the City Manager to execute the agreement with the County.

4. **COUNTY WIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM AGREEMENT FOR FY 2011/2012**

**Action(s):** Authorized the City Manager to execute the agreement with the County subject to the inclusion of funding in the adopted FY 11/12 city budget.

5. **EXTEND TERMS FOR MEMBERS ON THE LIBRARY, CULTURE & ARTS COMMISSION**

**Action(s):**

1. Approved term extensions for three members on the Library, Culture & Arts Commission until the vacancies are filled; and
2. Directed the City Clerk's office to notify the Commissioners of the term extensions.

***City Council and Redevelopment Agency Action***

## **CONSENT CALENDAR**

6. **APPROVAL OF JOINT REGULAR CITY COUNCIL AND REDEVELOPMENT AGENCY MEETING MINUTES FOR MARCH 16, 2011**  
**Action(s):** **Approved** meeting minutes for March 16, 2011.

## ***City Council Action***

### **PUBLIC HEARINGS:**

7. **WASTE MANAGEMENT RATE ADJUSTMENT**  
**Recommended Action(s):**  
1. **Open/Close** the Public Hearing; and  
2. **Approve** attached rate resolution.

Environmental Program Administrator Anthony Eulo presented the staff report and introduced the General Manager of Ecology South Valley, Phil Couchee, who spoke on the annual rate increase and the formulas to calculate the increase. Mr. Couchee noted that the exhibit illustrating the calculations had a typographical error that listed numbers from the previous year and should indicate a .73% increase to the rate.

Environmental Program Administrator Eulo continued his report and explained that services provided also included street sweeping of certain areas. He emphasized that the residents in the areas not swept are not charged for the service. He further explained that certain streets are not swept because the streets are private, there isn't safe access to the street, or there is no curb and gutter. He also explained the sweeping mechanics of the street sweepers and the reasons a street with no curb cannot be swept. He informed Council that staff requested Recology to provide a proposal when the new rate is requested next year to sweep the streets not currently swept.

Councilmember Libers asked whether Recology has vacuum sweepers and Mr. Cushee answered that they don't and would either have to obtain a different type of sweeper, or contract the service out.

Councilmember Carr asked whether staff felt there is enough demand for the additional services.

Environmental Program Administrator Eulo stated that it can be investigated and that if the service proves warranted and feasible then only the residents affected would bear the cost.

Councilmember Carr inquired if any complaints regarding the lack of service of this type had been received.

Environmental Program Administrator Eulo confirmed that complaints have been received but that most people were understanding of the situation.

Councilmember Siebert commended staff on efforts to improve services to residents.

Mayor Tate opened the public hearing at 7:46 p.m.

Public comment was received from Zachary Travler who asked Council if the traffic count or usage of the

streets would determine which would receive service.

Environmental Program Administrator Eulo clarified that all streets would be taken into consideration without regard to usage.

Joseph Carrillo asked how streets that are too small for the sweeper are currently cleaned.

Mayor Tate answered that they are not cleaned currently.

Mayor Tate closed the public hearing at 7:48 p.m.

***Action:** Opened the Public Hearing at 7:46 p.m.; and Closed the Public Hearing at 7:48 p.m. On a motion by Councilmember Libreros and seconded by Councilmember Siebert, Approved attached rate resolution 6413. The motion passed by the following vote: Ayes: 5, Noes: 0, Absent: 0.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **ITEMS**

#### **8. CITY COUNCIL FIRE AND EMERGENCY MEDICAL SERVICES (EMS) STUDY REGIONALIZATION RESPONSE**

##### **Recommended Action(s):**

1. Approve City Council's Fire/EMS regionalization response; and
2. Adopt the guiding principles; and
3. Direct staff to pursue regionalization opportunities that satisfy the guiding principles.

Mayor Tate provided a brief oral report regarding the joint approach to fire services. He explained that efforts have been undertaken with County Fire, South County Fire and the City of Gilroy to study a regional approach to fire services. He further commented that following careful consideration the guiding principles were developed.

Recreation and Community Services Director Steve Rymer presented the staff report. He pointed out a correction should be made to sentence one on item one on the exhibit; the corrected sentence should state "We are interested if the combination of service delivery enhancements and cost savings are realized and if all other South County agencies will also support" (Deletion noted in strikeout).

Councilmember Carr added comments regarding additional guiding principles.

Mayor Tate noted that a formal reply has been received from the City of Gilroy stating that further regionalization will no longer be pursued by them.

Mayor Tate opened the public comment period at 7:56 p.m.

No public comment received.

Mayor Tate closed the public comment period at 7:56 p.m.

**Action:** *On a motion by Councilmember Carr and seconded by Councilmember Constantine Approved City Council's Fire/EMS regionalization response; and Adopted the guiding principles; and Directed staff to pursue regionalization opportunities that satisfy the guiding principles. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

9. **MORGAN HILL COMMUNITY LED YOUTH INITIATIVE**

**Recommended Action(s): Consider** staff recommendation for the initial steps of a community led youth initiative.

Recreation and Community Services Director Steve Rymer presented the staff report.

Councilmember Librers inquired about the rewards breakfast that occurred on March 24, 2011.

Mayor Tate opened the public comment period at 8:05 p.m.

No public comment received.

Mayor Tate closed the public comment period at 8:05 p.m.

Councilmember Carr expressed excitement and support of this program.

**Action:** *On a motion by Councilmember Carr and seconded by Councilmember Constantine Endorsed staff recommendation for the initial steps of a community led youth initiative. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

***Mayor Tate Called for a Recess at 8:08 p.m. and Reconvened the Meeting at 8:16 p.m.***

10. **CENTENNIAL RECREATION CENTER (CRC) SERVICE DELIVERY MODEL EVALUATION**

**Recommended Action(s):**

1. **Approve** the CRC delivery model evaluation criteria.
2. **Direct** staff to work with the YMCA to evaluate alternative service delivery models that satisfy the criteria.
3. **Direct** staff to provide a City Council report by June 2011.

Recreation and Community Services Director Steve Rymer presented the staff report.

Councilmember Librers asked whether more programs will be made available.

Recreation and Community Services Director Rymer replied that this item will improve access and awareness.

Councilmember Librers inquired whether there is rent paid at the Friendly Inn location.

Recreation and Community Services Director Rymer stated that rent is one dollar and the utilities are split between all the tenants.

Councilmember Librers questioned whether there is space available to accommodate the YMCA at the Community and Cultural Center.

Recreation and Community Services Director Rymer stated that following a preliminary review it was determined that there would be sufficient space.

Councilmember Librers asked for clarification regarding whether YMCA membership included access to any facility.

Executive Director of YMCA Chris Ghione explained that providing YMCA members access to the CRC facilities would be a goal.

Councilmember Siebert requested information regarding accessibility and use of our facilities in terms of income distribution.

Recreation and Community Services Director Rymer provided comments regarding surveys including demographics information that have been conducted.

Councilmember Siebert asked if there were underserved sections of the population and if so if there is anything the City could do to increase accessibility of that population.

Councilmember Carr commented on the delivery of services at the CRC and the partnership with the YMCA. He also asked how the City could provide services to other parts of the City that do not have access to the CRC.

Recreation and Community Services Director Rymer commented on starting to expand services without duplication of effort and freeing up space in the Friendly Inn.

Mayor Tate opened the public comment period at 8:26 p.m.

Joseph Carillo commented on the need to recruit more volunteers by offering free membership and provided comments regarding improving access and quality.

Mayor Tate closed the public comment period at 8:28 p.m.

Councilmember Constantine commented on the success of the program and efforts to improve the program. He also noted that the City of Atascadero is modeling their program after Morgan Hill's. He further commented that the program is not only valued by the citizens but also by other cities in California.

Councilmember Siebert commended CRC staff and their enthusiasm.

Councilmember Carr commented on the successful efforts in reducing the general tax portion of the recreation program. He also offered positive comments regarding staff striving to continually improve programs and the great value of such a trait to the community.

**Action:** *On a motion by Councilmember Constantine and seconded by Councilmember Librers **Approved** the CRC delivery model evaluation criteria; and **Directed** staff to work with the YMCA to evaluate alternative service delivery models that satisfy the criteria; and **Directed** staff to provide a City Council report by June 2011. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

11. **ACTION ON RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS)  
COMPETITION SECOND YEAR PHASING REQUESTS**

**Recommended Action(s): Adopt** Resolution approving second year residential building allotments into fiscal year 2013-14 for two projects.

Planning Manager Jim Rowe presented staff report.

Councilmember Constantine asked what the repercussions would be if they got the allotment but did not build the project.

Planning Manager Rowe stated that if projects fail to proceed actions can be taken to rescind the permits and offer it to another project.

Councilmember Carr asked for clarification whether the item before Council is in regard to the second year allocation and Planning Manager Rowe confirmed that Councilmember Carr was correct.

Councilmember Carr confirmed with Planning Manager Rowe that this action would complete both of the projects and that both projects are on schedule for the first year allocations.

Mayor Tate opened the public comment period at 8:36 p.m.

No public comment received.

Mayor Tate closed the public comment period at 8:36 p.m.

**Action:** *On a motion by Councilmember Carr and seconded by Councilmember Constantine **Adopted** Resolution 6414 approving second year residential building allotments into fiscal year 2013-14 for two projects. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

12. **REVIEW OF ENVIRONMENTAL AGENDA**

**Recommended Actions(s):**

1. **Accept** report on Environmental Agenda implementation; and
2. **Provide** direction to staff, as appropriate, on revising the Environmental Agenda; and
3. **Provide** direction to staff on Environmental Agenda implementation in 2011; and
4. **Provide** direction to staff, as appropriate, on additional actions or activities the City should take in support of the City's environmental goals.

Program Administrator Anthony Eulo presented staff report.

Councilmember Librers asked what a climate action plan is.

Program Administrator Eulo explained that a climate action plan is to minimize the climate changing impact a community might have specifically to reduce emissions.

Councilmember Librers asked what single use bags were and Program Administrator Eulo noted that single use bags would include the plastic bags commonly received at the grocery stores.

Councilmember Librers clarified that this issue had been brought up to the Council before.

Mayor Tate commented that he is on a subcommittee through the Cities Association and that they have planned to present to the cities a proposal similar to the one in San Jose and that foam packaging would also be addressed within that. He further requested that any action on this item be tabled until the proposal is received from the Cities Association.

Councilmember Carr mentioned the significant difference between what was proposed previously in eliminating plastic bags and the elimination of single use bags.

Program Administrator Eulo concurred and further explained that one of the differences is that it has been recognized that encouraging people to use paper bags has a questionable environmental benefit and secondly the previous discussions included a proposed fee where some of the revenue would benefit the City.

Councilmember Constantine commented on recycled content of paper bags and asked whether a standalone climate plan or one adopted as part of the General Plan would be most cost effective for the City.

City Manager Ed Tewes clarified that to create a climate action plan would have a cost but there would not necessarily be any difference in cost to have it adopted as an element in the General Plan.

Councilmember Constantine confirmed understanding through Program Administrator Eulo that there would be no appreciable difference in cost in both options and that another element to the General Plan could be adopted at any time.

Councilmember Siebert asked if there is a possibility of having the development community fund the entire process of developing a climate action plan as they would garner most benefit from it.

City Manager Ed Tewes noted that staff is not recommending the development of a climate action plan and that staff is seeking guidance from the Council whether it should be pursued. He further commented that there would be benefit to developers but because Council had not provided specific direction towards developing a plan, funding options have not been specified.

Councilmember Siebert stated he would like such a plan in place but that the development community would benefit most from such a plan and it would be more efficient for them to combine their efforts and work with the City to have such a plan adopted.

City Attorney Wan commented that a climate action plan would not completely eliminate the need for an EIR for developments but that it might satisfy certain requirements.

Councilmember Siebert stated that it would be much more efficient if the data could be developed on a city wide basis rather than on an individual basis. He also stated that he would like guiding principle number seven moved to a higher priority on the agenda.

Mayor Tate opened the public comment period at 8:54 p.m.

Joseph Carillo commented on shopping carts in creeks and that plastic bags should be eliminated.

Sherry Purser commented on concerns regarding accepting the report without looking at all parts of the report. She also stated her concern on issues being misrepresented regarding single use bags and people reusing the bags and that plastic grocery bags are degradable when exposed to the sun. She encouraged Council not to pass any legislation banning the use of single use bags.

Julie Hutchenson commented on her appreciation for staff's work. She noted that plastic bags are impairing our waterways. She encouraged Council to direct staff to move forward in adopting an ordinance regarding banning single use bags.

Mayor Tate closed the public comment period at 9:00 p.m.

Councilmember Siebert noted that it appears that because our residents are conserving water to a great extent it is causing the water fund to suffer and also resulting in reduction in ability to maintain the water system.

Program Administrator Eulo confirmed Councilmember Siebert's comments and stated that all water utilities are facing the same struggle and noted that revenue is also down due to the economy.

Councilmember Siebert suggested that item number seven on the environmental agenda be moved up in prominence to number one as it seems to portray being cost conscious while promoting a strong environmental agenda.

Mayor Tate stated that he did not think there was any priority in the way items were listed on the environmental agenda.

Councilmember Carr thanked staff for the report and provided a brief history regarding the environmental agenda. He stated that at the initial goal setting meeting the strategy had been to get more issues under one goal and that because all areas are interrelated it made sense at the time and seemed more efficient to consider all items as a whole. He further commented on the impact of AB32 and that at the time there was an understanding that the issues would have to be addressed anyway and Council was trying to address the issues before Sacramento forced action. He noted that the Climate Action Plan formalized some of the concerns and the benefit to developers should be explored further. After briefly restating concerns from one of the public speakers regarding whether the cause and effect of these items have been appropriately analyzed, he stated that the impact of these items had been appropriately analyzed as evidenced by the environmental indicator report. He pointed out that the report was very comprehensive and that other cities used it as well. He expressed his support of the environmental agenda as well as his hope to have sufficient funding in the future to accomplish the goals. He once again stressed that the document was purposed to be a broad document in order to serve as a vision and that instead of disregarding the agenda, certain aspects could be moved forward even during difficult economic times. He reiterated that the items were not a prioritized list and he would not be opposed to renumbering items,

but stated that Council should not move towards prioritizing items according to their standing on the list. He reaffirmed his support of the Environmental Agenda.

Councilmember Constantine commented on his previous experience as a grocery store bagger and that when plastic bags were initially introduced they were touted as being more environmentally friendly as they were photodegradable but it has been shown that the bags are not always exposed to the sun in landfills and people don't always throw them in the trash. He further expressed his support of the Environmental Agenda but stated his concern regarding working in conjunction with the Habitat Conservation Plan and AB32 and that we have to ensure that we are not duplicating effort and expending resources that would be better spent elsewhere.

Councilmember Librers stated that she also supports the Environmental Agenda however, urged further exploration of some of the items, such as the plastic bag issue.

Councilmember Siebert commented that the Morgan Hill community is different than many as it is urban but possesses great agricultural bounty and stressed his concern that the goals did not reflect agricultural concerns. He further commented on the current popular movement to consume local products and that the agricultural industry should be considered and the local production and consumption of food should be encouraged. He stated that he would like to contribute further but is able to only suggest concepts but that encouraging local production and consumption of food would also increase health.

Councilmember Carr suggested that the local resources and products category could be made much more specific to address Councilmember Siebert's comments.

Councilmember Siebert reiterated that not only consumption should be emphasized but production as well.

Mayor Tate stated his support of the Environmental Agenda and on continuing to improve it. He remarked that he is not sure whether the community's priorities are clear and is unsure on prioritizing the items at all.

Councilmember Siebert suggested that an adhoc committee with representatives from the development community and representatives of the environmental community could be formed to analyze and formulate some suggestions to provide to Council. He observed that due to limited resources and not wanting staff burdened further this would be an excellent opportunity for volunteers to step forward.

Mayor Tate stated that that would be taking the next step and he would prefer to hear from staff first as to what degree of effort it will take to clarify these issues.

City Manger Tewes stated that Council already directed staff to advise on how to proceed on the General Plan update and that it would be appropriate to consider this question as part of that conversation. He further stated that even if a climate action element is adopted into the General Plan it will have to be internally consistent and it would be better if the General Plan is comprehensively evaluated.

City Attorney Wan pointed out that many of the State mandates are being evaluated on a regional level. He urged that any planning done through a study group or adhoc committee considers what is happening on a regional level and avoiding duplication of effort.

Councilmember Constantine suggested combining efforts with other local agencies and perhaps reducing costs.

City Attorney Wan stated that ABAG has invited Morgan Hill to participate in their regional planning efforts. He pointed out that it is a good suggestion to get some ideas from the other local agencies and that Morgan Hill should go further and plan ahead. He reiterated that it is important that Morgan Hill's attempt does not conflict with those regional efforts.

Mayor Tate asked staff if they were clear on Council's direction.

City Manager Tewes summarized that Council is not proposing to significantly revise the Environmental Agenda adopted previously in September 2007. He reported that Council suggested that one of the guiding principles be moved to earlier in the document and that there might be some additional discussion about locally grown food products. He confirmed that Council is to return to discuss various issues related to a climate action plan as part of the budget discussion.

Councilmember Constantine asked whether staff is asking Council to add to the Environmental Agenda.

City Manager Tewes confirmed that staff is asking Council to consider adding to the document as discussed at the goal setting retreat.

Councilmember Constantine recommended consideration of electric charging stations for electric vehicles and instituting a plan for a tree removal policy where developers would have to replace every tree cut down.

City Manager Tewes noted that the City already has such a policy.

Mayor Tate asked whether the Environmental Agenda should make it clear that all items are not being actively pursued at all times but rather as resources become available.

Councilmember Siebert stated that he was unaware that the items were not prioritized but that he wanted to move item seven to reflect the importance of cost effectiveness and available resources.

Councilmember Carr asked for clarification whether Council is suggesting moving item number seven to the top of the Agenda.

City Manager Tewes asked Council for a little leeway in the editing process as item one sets forth the overall commitment to sustainability which is important to state prior to moving to item number seven.

Councilmember Carr confirmed that item seven would then be moved to item two. He further commented on inserting language supporting the production and consumption of locally grown food products to the item discussing local resources and products but stated that that might make the statement redundant.

Councilmember Siebert suggested editing the item to stress that the Council values the local production.

City Manager Tewes mentioned that one of the speakers had observed a shopping cart in Llagas Creek and requested that Mr. Carillo would let staff know where exactly it is located so that it can be passed on

to the Santa Clara Valley Water District. He also reminded the public that they need not wait until a Council meeting to report concerns to the Santa Clara Valley Water District as they have a twenty four hour hotline. The phone number is 1-888-510-5151.

Program Administrator Eulo asked for clarification regarding Councilmember Constantine's suggestion of electric vehicle charging stations and whether Council was in consensus with that suggestion.

Mayor Tate and Councilmember Siebert confirmed support of the item.

Program Administrator Eulo mentioned revising the language at the end of the document that speaks to implementation, maintenance and development to reflect Mayor Tate's suggestion to make it clear that all items are not being actively pursued at all times but rather as resources become available.

Councilmember Carr expressed his concern that in adding a statement to the document as suggested by Mayor Tate would negate the purpose of the entire document. He stated that the plan itself addresses these broad approaches enough and the reality is that everything that Council currently does is accordance to whether resources become available and that he does not think it needs to be stated in the document itself.

*No Action Taken.*

***City Council Action/Changed to joint City Council and RDA item***  
**OTHER BUSINESS:**

**13. AWARD OF CONTRACT FOR DESIGN-BUILD OF CENTENNIAL RECREATION CENTER SOLAR PHOTOVOLTAIC SYSTEM**

**Recommended Action(s):**

1. **Award** contract to the selected proposer to design-build a solar photovoltaic system at the Centennial Recreation Center; and
2. **Authorize** the Executive Director to execute the agreement with the selected proposer

Program Administrator Eulo presented report.

Councilmember Siebert asked whether there was at least one technical expert as part of the project.

Program Administrator Eulo confirmed that several experts participated in the evaluation process including internal staff and a representative from a consulting firm who evaluated the staff expertise and the experience level of the bidders. He further commented that for the RFP process three members with the same consulting firm reviewed the RFP responses.

Mayor Tate opened the public comment period at 9:38 p.m.

Comments received from Sean Kenny regarding the bid process and the misunderstanding that occurred with his company. He further stated that their submittals contained all the information regarding the entities who would be doing the work and that he believes that DRP could offer the best value and that

their bid would have been substantially lower. He requested that Council rethink the matter and not award the bid.

Comments received from Brian Sullivan to clarify how he thought the process should have occurred and his concern regarding limiting submittals to paper only. He stated that he viewed the CD as an attachment to the paper submittal. He urged that the process should be improved.

Comments received from Joseph Carrillo commented that he is glad that the city is installing solar panels as they are good for the environment.

Mayor Tate Close the public comment period at 9:45 p.m.

Councilmember Constantine asked whether the City would be opening itself up to litigation if the project was rebid.

City Attorney Wan noted that Council has discretion to reject bids and rebid and would not be subject to litigation.

Councilmember Constantine asked if the project was rebid, could staff limit the submissions to only those bidders who participated previously.

Program Administrator Eulo clarified that the option is to reject all bids and start the process all over.

Councilmember Constantine asked whether Program Administrator Eulo thought it would be a better course of action to reject all bids or if he thought the process was fair to all.

Program Administrator Eulo stated that the important issue is the ongoing threat to Redevelopment Agency funds and that was the reason the process was completed more rapidly.

Councilmember Constantine commented on previous discussion on the item and that they were rushed at that time and feels that the City might miss an opportunity to utilize a local vendor and also to get the best value for money. He also stated he is in favor of rejecting all bids because when items are processed in a rush mistakes can be made and he is uncomfortable with receiving the supplement so late and being unable to review it. He reiterated that it would be fairer to all parties if the project was rebid.

Councilmember Librers inquired how the decision was made to not accept electronic submissions.

Program Administrator Eulo replied that it is very normal to only accept paper submittals. He further stated that staff was not eager to exclude anyone from the process and had there been any indication to review the CD he would have recommended to do so.

Councilmember Carr confirmed with Program Administrator Eulo that when reviewing the RFQ submittals the RFP's are not allowed to be opened, and that if the RFP was opened during the RFQ phase the City would have been in violation of the process.

Program Administrator Eulo reiterated that there was no indication to review the CD and that in addition the CD was supposed to be an electronic pdf submission of the paper submittal of the RFP and was not meant to be an attachment or supplemental item to provide additional information.

Councilmember Carr confirmed with Program Administrator Eulo that no formal bid protest has been received.

Program Administrator Eulo further clarified that only qualified bidders as identified by the RFQ process were able to submit formal bid protests and that the firm that submitted a protest did not properly label their protest in acknowledgement of the rules of the process but was responded to.

Councilmember Carr asked whether a formal bid protest would have invoked a different process.

Program Administrator Eulo stated that it would invoke a different process that would have involved the Public Works Director making decisions and responding.

Councilmember Carr asked whether the State process that was followed for the RFQ process does not allow for formal protest or was that a decision made by staff.

Program Administrator Eulo clarified that the State does not mandate a formal protest process as part of the RFQ process.

Mayor Tate expressed his concern regarding if the bidder was not qualified as indicated by the materials that they submitted in response to the RFQ, the City should not know what is contained in the RFP submitted by the same bidder. He also asked if the RFP had been opened and how the City would know if the bidder presented a better value.

Program Administrator Eulo noted that the RFP had not been opened and that the City's process has not been violated.

Mayor Tate questioned why Council should reject the bids and rebid based on an issue that Council is not supposed to know.

Councilmember Constantine asked Mr. Kenny whether the process was not clear or if there was a misunderstanding within their company.

Mr. Kenny stated that there was some ambiguity in the process and due to the rushed nature of preparing the submittal certain interpretations had to be made.

City Manager Tewes explained that there may have been a misunderstanding but that the RFQ was quite clear but perhaps not fully understood.

Councilmember Librers inquired whether it is still imperative to complete this item so soon.

City Manager Tewes reiterated the concerns regarding the State's plans for eliminating the RDA but that the future of the RDA is still unsure.

Councilmember Librers commented on having to make previous decisions under pressure that she was uncomfortable with.

Councilmember Siebert asked how much time would be needed to advertise before accepting new bids.

City Attorney Wan responded that the statute doesn't specify an amount of time but that a sufficient time to respond should be allowed.

Councilmember Siebert commented on being pressured to make decisions due to the threat to the RDA and various statutory requirements regarding publishing of the bid notices. He asked whether you could notify the current bidders and require a 72 hour turn around for the process.

City Attorney Wan stated that if Council chose to reject all bids the process would have to be restarted and there would have to be the assumption that there could be other bidders and there would therefore be a need to provide adequate time for the new bidders to also submit bids. He advised against making the timeframe any shorter than the previous process.

Councilmember Librers commented that this processed seemed very rushed.

Councilmember Siebert asked how long the bid was open.

Program Administrator Eulo stated that it was open for a week and a half.

Councilmember Siebert asked if there was a mandatory pre-bid.

Program Administrator Eulo stated that there was not.

Councilmember Siebert commented that he understood that on occasion informalities could be waived and asked whether it could be done in this instance.

City Attorney Wan explained that this was not a simple informality as in the very first paragraph of the package inviting the bid it is clearly stated that only proposals from potential DBE's that pass the RFQ process will be evaluated in the RFP process and proposals from non-qualifying entities will be returned. He further noted that proposers had sufficient time to pose questions regarding the process that the City answered and forwarded to all proposers. The issue of how to identify different team members was a question addressed by staff and the response was provided to all proposers. He emphasized that it was made clear that all team members must be identified. He noted that the process was rushed but that it was fair.

Councilmember Constantine stated that he has no doubt that staff did an excellent job but still feels that because the process was rushed there may have been more opportunity for misunderstandings and problems. He stressed his concern regarding his responsibility to the tax payers and did not want to award a project in a hurry.

Councilmember Siebert agreed with Councilmember Constantine and further commented on Council being conflicted. He also commented on the possibility of errors when items are rushed but feels confident that staff did a good job. He agreed with the Mayor that Council should not make any decisions on the information they should not have but it concerns him that there may be an opportunity to get a better value and supports rejecting all the bids and re-advertising. He stated his willingness to attend a special meeting if the timeframe of rebidding the item warrants it.

Councilmember Siebert made a motion to reject all bids and re-advertise in as short a time as possible in

order to get best value. Councilmember Librers seconded the motion.

Councilmember Carr voiced his concerns regarding rejecting the bids and having staff rush through another process will not help qualify submittals in any different way. He stated that he does not feel pressured to make a decision as the process was sound and is unable to justify rejecting the bids. He stated his concerns that there are no suggestions to staff to improve the process and that rebidding the project will just give other proposers the opportunity to see what everyone else has done.

Mayor Tate noted that the City Attorney did state that Council can reject all bids for no reason.

Councilmember Carr stated that he is unable to reject all bids for no reason. He said that if the reason is to support local business then it should be stated.

Councilmember Constantine stated he does not think staff made a mistake but feels uncomfortable making a decision when he received the supplement to the item so late.

Councilmember Siebert concurred with Councilmember Constantine and stated that it was an error in the part of a team but because the error was made by a local group he would like to give them an opportunity to give the best value to the tax payers.

Councilmember Carr reiterated that Council can't know whether it would be a better value to the tax payer.

Mayor Tate agreed with Councilmember Carr and further stated that rejecting all bids would set a terrible precedent where anyone could argue the result of a bid if they did not understand the process.

Councilmember Librers stated hopefully the next time this process is utilized it won't be in such a rush and commented on how short the timeline was and that she plans to reject all bids.

Mayor Tate called the question on the motion as stated by Councilmember Siebert and seconded by Councilmember Librers.

Councilmember Carr reiterated that it was a short timeline but that the process was fair to all.

Councilmember Constantine expressed his agreement to all the statements of his colleagues.

Councilmember Carr noted that he also agreed with his colleagues concerns but could not in good conscience reject all bids as there is no sound reason to do so and to do so would not improve the process.

City Manager Tewes asked clarification on the motion and whether the suggestion was to shorten the process even further. He stated that staff needs some direction on how the Council would like the process handled and confirmed that Council would like to review the documents as part of the regular packet rather than a supplemental item.

Councilmember Siebert would like the timeline to be the same or quicker.

City Manager Tewes presented the alternative Council meeting date of April 27, 2011, to discuss the item again.

Councilmember Constantine noted that the rush of this item is what caused the concern and that a longer timeline would be appropriate. He asked staff what an appropriate timeline would be.

Program Administrator Eulo explained that all the documents were already prepared and there is no advertising requirement and the firms have already been provided the information with which to formulate a response therefore the exact same timeline would be better. He further stated that following the same timeline previously established would allow the item to come before Council on April 20, 2011.

Councilmember Constantine and Councilmember Siebert stated that they would like to hear the item on April 20, 2011.

**Action:** *On a motion by Council/Agency Member Siebert and seconded by Council/Agency Member Libbers **Rejected** all bids; and **Directed** staff to rebid project and bring the item back to Council on April 20, 2011. The motion passed by the following vote: Ayes: 3; Noes: 2(Tate, Carr); Absent: 0.*

**FUTURE COUNCIL AGENCY-INITIATED AGENDA ITEMS:**

None.

***City Council Action***

**CLOSED SESSION:**

**OPPORTUNITY FOR PUBLIC COMMENT**

**ADJOURNED TO CLOSED SESSION AT 10:16 p.m.**

**CONFERENCE WITH LABOR NEGOTIATOR:**

Authority:	Pursuant to Government Code Section 54957.6
City Negotiator:	Mayor
Employee:	City Manager

**CONFERENCE WITH LABOR NEGOTIATOR:**

Authority:	Pursuant to Government Code Section 54957.6
City Negotiator:	Mayor
Employee:	City Attorney

**CONFERENCE WITH LABOR NEGOTIATOR:**

Authority:	Pursuant to Government Code Section 54957.6
City Negotiators:	City Manager, City Attorney
Employee Organization:	Morgan Hill Police Officers Association
	Employees Covered under Management Resolution #6381
	AFSCME Local 101

Morgan Hill Community Service Officers Association

**RECONVENE**

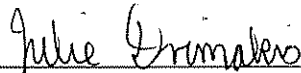
**CLOSED SESSION ANNOUNCEMENT**

No reportable action.

**ADJOURNMENT**

There being no further business, Mayor/Chair Tate adjourned the meeting at 10:55 p.m.

**MINUTES PREPARED BY:**

  
\_\_\_\_\_  
**JULIE DRIMAKIS, Deputy City Clerk**